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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

OCT 28 2002

Michael N. Milby
Clerk of Court

LUIS ALEJANDRO GARZA,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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Civil Action No. B-02-154

UNITED STATES OF AMERICA'S ANSWER TO PLAINTIFF'S COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

The United States of America, defendant herein, by and through Michael T. Shelby, United States Attorney for the Southern District of Texas, hereby files its answer to Plaintiff's Complaint. The United States answers the consecutively numbered paragraphs as follows:

1. The United States admits the allegation in paragraph 1.

PARTIES

2. The United States lacks the information which would allow it to admit or deny.

However, to the extent that a response is required, it is denied.

JURISDICTION

3. The United States admits the allegation in paragraph 3.

VENUE

4. As stated in the response to paragraph 2, the United States lacks the information which would allow it to admit or deny the plaintiff's place of residence. However, because paragraph 2, to the extent that a response is required to it, is denied, so then is paragraph 2 likewise denied.

PREREQUISITES TO SUIT

5. The United States admits the allegation in paragraph 5 of the complaint.

FACTS

6. The first sentence is admitted only to the extent of the date on which the plaintiff was attacked. With respect to the number of attackers, the brutality of any attack, and the severity of any beating, the defendant lacks the information which would allow it to admit or deny; however, to the extent that a response is required, it is denied. The rest of the paragraph is denied.

7. The United States denies the allegations in paragraph 7.

8. The United States denies the allegations in paragraph 8.

9. The United States denies the allegations in paragraph 9.

10. The United States denies the allegations in paragraph 10.

11. This paragraph does not require a response; however, to the extent that a response is sought, it is denied in that the defendant opposes the plaintiff's prayer.

AFFIRMATIVE DEFENSES

In accordance with Rule 8(c) of the Federal Rules of Civil Procedure, the United States hereby asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

To the extent that any of plaintiff's injuries or damages alleged in his complaint were proximately and/or solely caused by a third party, and not the United States, plaintiff's claim for recovery is, therefore, reduced and/or barred accordingly.

SECOND AFFIRMATIVE DEFENSE

The United States denies plaintiff's injuries and/or damages were caused and/or contributed to by any fault attributable to it, but, in the event this Court does attribute such fault to the United States of America, then, in the alternative, the United States specifically pleads the applicability of superseding and/or intervening cause as a defense and a bar to recovery against the United States by plaintiff.

THIRD AFFIRMATIVE DEFENSE

The United States is entitled to dismissal for lack of subject-matter jurisdiction.

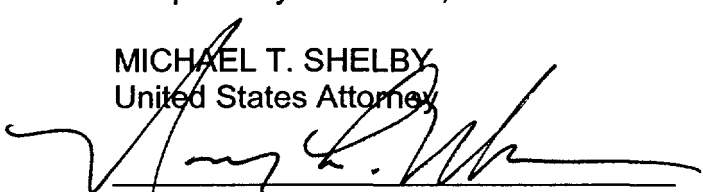
FOURTH AFFIRMATIVE DEFENSE

The United States is entitled to a dismissal for failure to state a claim upon which relief can be granted.

WHEREFORE, PREMISES CONSIDERED, the United States requests that Plaintiff's Complaint be dismissed with prejudice, and that all relief requested be denied. The United States requests all other relief, both law and equity, to which it is entitled.


Respectfully submitted,

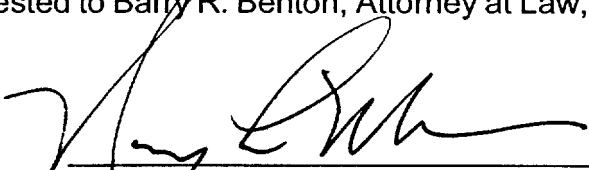
MICHAEL T. SHELBY
United States Attorney



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CERTIFICATE OF SERVICE

 I hereby certify that a copy of the true and foregoing United States of America's Answer To Plaintiff's Complaint was mailed on this the ~~28~~²⁹th day of OCTOBER, 2002 via Certified Mail, Return Receipt Requested to Barry R. Benton, Attorney at Law, 284 Ebony Avenue, Brownsville, TX 78520.



NANCY L. MASSO
Assistant United States Attorney